IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8934 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMIRMIYA MURTUJAMIYA SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SK PATEL, Learned AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/10/2000

ORAL JUDGEMENT

1. The petitioner has filed the present petition under Article 226 read with Articles 14, 19, 21 and 22 of the Constitution of India challenging the order of his detention dated 8.7.2000 recorded by the second respondent in exercise of powers conferred on him by

Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. On receiving the petition, rule was issued and Mr. S.K.Patel, learned AGP appeared for State. Mr. Patel, learned AGP has submitted affidavit in reply of Mr. P.R.Shukla, Government of Gujarat, Food, Civil Supply and Consumer Department which is taken on record. Ms. P.J.Dawavala the learned Addl. Senior Counsel for Union of India has also filed an affidavit of Mr. R.N.Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi which is taken on record. I have heard the learned advoctes for the parties and have perused the papers.

3. The learned advocate for the petitioner has argued at length that the petitioner was not supplied with legible copies of documents and therefore valuable right of the petitioner of making effective representation has been taken away by the respondents. For that purpose, certain pages were referred by the learned advocate for the petitioner. They are pages nos. 75, 175 and 181 etc. of the accompanyment to the petition. Those pages were referred to Mr. Patel, learned AGP appearing on behalf of the respondents. He states that so far page-175 is concerned, the same is not fully legible and there cannot be any dispute about the same. It is therefore clear that the said document is not legible and, there is no dispute about the fact that the said document has been relied upon by the detaining authority for the purpose of passing detention order against the petitioner. Supply of illegible documents would amount to non-supply of documents relied upon for the purpose of passing detention order. Therefore, this is a case in which it can be said that the document relied upon by the detaining authority has not been supplied inasmuch as the legible copy thereof has not been supplied to the petitioner. This has taken away the valuable right of making effective representation against his detention. Same way, this would also take away constitutional guaranteed under Article 22(5) of the Constitution of India. Therefore, there is clear violation of principles of natural justice. Same way, there is violation of statutory as well as constitutional right of the petitioner of making effective representation since effective representation cannot be made unless legible copies of documents relied upon by the detaining authority are supplied.

4. In this case it would be worthwhile to a refer to decision of this Court in Special Civil Application No. 618 of 1999 dated 3.3.2000 (Coram : B.C.Patel,J). Para. 3 of the said judgement reads as follows :

> Without addressing about legality of the grounds of detention, the learned advocate for the petitioner submitted that the petition is required to be disposed of on a short ground as the papers supplied to the detenu are not legible. In view of this, the detenu is deprived from making effective representation. He further stated that the all papers are not illegible but some papers are illegible and as a result of which, his right has been adversely affected. Mr. Patel, learned AGP after going through the papers, is not in a position to state that all the papers are legible, some of the papers are illegible. Suffice it to say that the same has deprived the detenu from making effective representation and hence the detention order requires to be quashed and set aside. The detention order passed against the detenu is hereby quashed and set aside. The detenu shall be released forthwith if he is not required in any other case. The petition is allowed. Rule is made absolute.

5. It would therefore be clear that if a document is relied upon and considered by the detaining authority for the purpose of detaining the petitioner and if the copy of that document supplied to the petitioner is not legible then valuable right of the petitioner of making effective representation has been taken away. This would be in violation of the principles of natural justice. It would also hurt the statutory right of the petitioner to make effective representation and ultimately, it would hurt the constitutional right under Article 22(5) of the Constitution of India. In that view of the matter, the aforesaid order of detention suffers from aforesaid infirmity and consequently, it is required to be quashed and set aside.

6. For the reasons stated above, this petition is required to be allowed and the order of detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed by the District Magistrate, Vadodara against the petitioner on 8.7.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required

in any other case. Rule made absolute accordingly with no order as to costs.

(D.P.Buch,J)

(vipul)